

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA

FILED

OCT 18 2006

TERESA L. DEPPNER, CLERK
U.S. District Court
Southern District of West Virginia

Betty Murphy AKA Avant

#15926097

Thomas Avant

22190-057

*(Enter above the full name of the plaintiff
or plaintiffs in this action).*

(Inmate Reg.# of each Plaintiff)

VERSUS

CIVIL ACTION NO. 1:06-0878
(Number to be assigned by Court)

Tina Altizer, Former Unit Manager (A Building)

Federal Bureau of Prisons et. al.

Acting Captain Stanley; Correction Officer Shephard
Lieutenant Oakes
Warden Hickey

*(Enter above the full name of the defendant
or defendants in this action).*

COMPLAINT

I. Previous Lawsuits

- A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes No X

- B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit

Plaintiffs: N/A

Defendants: N/A

2. Court (if federal court, name the district; if state court, name the county):

N/A

3. Docket Number: N/A

4. Name of judge to whom case was assigned:

N/A

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

N/A

6. Approximate date of filing lawsuit: N/A

7. Approximate date of disposition: N/A

II. **Place of Present Confinement:** Thomas Avant FCI Edgefield
Betty Murphy AKA Avant FPC Alderson

A. Is there a prisoner grievance procedure in this institution?

Yes x No

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes x No

C. If your answer is YES:

1. What steps did you take? BP 9, B 10, B11

All levels and S/S Lieutenant Jones

2. What was the result? Negative

D. If your answer is NO, explain why not: N/A

III. **Parties**

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: Betty Murphy AKA Avant

Address: Box A, Range A-4 Alderson, WV 24910 (FPC)

B. Additional Plaintiffs and Address: Thomas R. Avant

P.O. Box 725 Edgefield, SC 29824 (FCI)

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

- C. Defendant Tina Altizer, Case Manager/Federal Bureau of Prisons
is employed as Case Manager
at Federal Prison Camp Alderson, Box A Alderson, WV 24910
- D. Additional defendants: Activity "unknown" Stanley, Federal Prisons;
Department of Justice; Correctional Officer Shephard, Lieut-
enant Oakes, Warden Hickey

IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheet if necessary).

This is a First Amendment Case of wrongful infliction of pain and suffering that has caused irreparable damage based on the defendants
wrongful, intentional, wanton denial of basic liberties as to the prisoner's
Eighth Amendment. The defendants showed deliberate indifference. These

circumstances arises from the BOP's Case Manager's (Tina Altizer) refusal
to allow correspondence between former ex-husband, Thomas Avant, "based
solely on the 'length of separation' (only twenty (20) years)". Murphy-
Avant has been incarcerated seventeen (17) of those years. The BOP has

allowed and permitted visitation with Thomas Avant. Yet, Tina Altizer, former
Unit Manager of A Building, made the baseless call to deny. As a result, Murphy
was placed in a position to seek other avenues against policy to communicate
with her cancer-ridden former ex-husband, step-father to her children, grand

IV. Statement of Claim (continued):

children and great-grand children. Mr. Avant's facility nor the Probation Department found cause to prevent the correspondence, both names are clearly personal history, as stated on both Pre-Sentence Reports. Murphy believes the denial is ill-willed, malicious, cruel and unusual punishment. Murphy-Avant has submitted two (2) correspondence requests to the Warden and Unit Team that have gone unanswered. Discussions with present Unit Manager/SIS Lt. and Warden have proven fruitless. Mr.

Avant is Murphy-Avant's only living ex-spouse. Murphy-Avant received an Incident Report for getting a releasing inmate to mail her letters to Avant. This Incident Report, although a violation of Policy (Code 410 Misuse of the Mail), coupled with a Code 328 "Giving an inmate something of value or money" because of the stamp on the

letter caused Murphy to lose her preferred housing for sixty (60) days and have Quarters restrictions for thirty (30) days. In addition, Murphy had earned a seven (7) day furlough, that was cancelled due to the incident report, which would not have occurred had the correspondence request had originally been approved.

The Bureau recognizes common-law relationships with prior criminal history and does not recognize bonafide legal marriage or ex-husbands even with 43 years

of friendship, marriage and continued friendship with the possibility of remarriage.

V. RELIEF

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

1. Have BOP honor their own policy of personal history (over 40 years) and allow correspondence between Avants. PS. 7100.12
2. Refrain from any and all restrictions of correspondence, visit or association with her ex-husband. Allow and honor Thomas Avant's request for correspondence and association with his wife immediately. She desires correspondence.
3. Expunge Incident Report and order seven (7) days furlough restored and/or reduce seven (7) days from the active sentence.
4. Stop any and all retaliation, mockery and harassment, etc. by all and acting Captain Stanley, who announced to all housing units (including Murphy's) "Furlough was cancelled because of a mail violation" causing undue pain and suffering and embarrassment. During the investigation and execution of the Incident Report, Officer Shepherd destroyed mitigating evidence. Lt. Oakes made Inmate Blevins, a witness (hostile) by lying to her stating "Murphy-Avant said her friend, Karen Long, stole Murphy-Avant's mail." I never accused Long of stealing mail from me, but did want the witness to state "she" gave her ^(Karen) my mail to mail when she was released and not Murphy-Avant, Plaintiff as she is accused. However, it was

V. Relief (continued)

Murphy-Avant's mail and sanctions were appropriate but denial of correspondence and remarriage is inappropriate. The defendant's intentional and unjustified delay ~~and~~ caused suffering, Of actual harm, by not providing Betty Murphy aka Avant and Thomas Avant procedural protections when they restricted correspondence right, protected by constitutionally-based liberty interest protected by due process Procunier v. Martinez, 416 U.S. 396, 417-419, 94 S. Ct. 1800 (1974), Wheeler vs. U.S., 640 F. 2d 1116. There was no good reason to bar correspondence between Thomas Avant and Betty Murphy aka Avant. (Murphy is the maiden name.) Massey v. Wilson, 484 F. Supp 1332.

VII. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

N/A

- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes _____ No XX

If so, state the name(s) and address(es) of each lawyer contacted:

N/A

If not, state your reasons: Pro Se

- C. Have you previously had a lawyer representing you in a civil action in this court?

Yes _____ No ✓

If so, state the lawyer's name and address:

N/A

Signed this 3rd day of October, 10 2006.

Betty Murphy AKA Avant
Betty Murphy aka Avant
Thomas Avant (POA)
Thomas Avant

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 23, 2006
(Date)

Betty Murphy AKA Avant
Thomas R. Avant (POA)
Signature of Movant/Plaintiff

Betty Murphy AKA Avant Pro Se
Signature of Attorney
(if any) Thomas R. Avant

Betty Jean Murphy
#15926-057

Background:

This case arises from the Bureau of Prison's (BOP's) denial of correspondence and based on "length of separation and no children" between Thomas R. Avant and Betty Murphy, formerly Betty Murphy-Avant (hereinafter Murphy-Avant).

The personal history of this relationship commenced in/or about 1963, and has remained a friendship through the marriage and divorce. All is noted in the Pre-Sentence Report of both Mr. Avant and Mrs. Murphy-Avant and is listed as ex-former husband also on the visitation list at Alderson FPC. Sometime during 2005, Avant's institution, FCI Edgefield processed a request for correspondence. Without any notification to Murphy-Avant at all. Tina Altizer, Unit Manager actually denied that request based on "length of separation" (only). Murphy-Avant has served an active sentence since 1989 (17 years) and the friendship has remained. Remarriage has been considered. It is because Avant initiated the request, Murphy-Avant could not pursue an Administrative Remedy to cure this procedural defect until Warden Hickey denied her request on 9/18/2006. In addition to that, Murphy submitted two of her own correspondence request forms for consideration. Both went unanswered by Unit Team Staff at Alderson FPC. A correspondence form was submitted to Warden Hickey. There were urgent legal and medical family matters between Thomas Avant and Murphy-Avant. Avant's step-son has criminal legal issues and Avant himself is a victim of colon cancer. After a substantial waiting period, an inmate who was being released received some of my mail which was delivered to her by her girlfriend Roxanna Blevins. She (Karin Long) was searched by correction officer Shephard while departing and inside two (2) white sealed envelopes were two (2) letters addressed for Thoams Avant from sender, Betty Avant (one in the same) with a P.O. Box 24192 which is a registered P.O. Box to Betty Murphy-Avant in her hometown, Winston Salem, North Carolina. Shephard destroyed the two (2) outer envelopes that encased the 2 letters and presented only 2 letters that were removed from the plain white envelopes with the name "Karen" on them writted by Roxanne Blevins, which whould have proven Murphy did not give Karen the mail.

Thomas Avant and Betty Murphy-Avant, anticipate a remarriage upon Murphy-Avant's release in 2007. The defendants intentionally and unjustifiably delay in approving any correspondence has caused suffering of actual harm by not providing Murphy-Avant and Thomas Avant with Procedural protections of well documented information when their restricted and imposed denial and sanctions on correspondence, rights protected by constitutionally based liberty interest in violation of Due Process in violation of Procurier vs. Martinez, 416 U.S. 396, 417-19, 94 S.Ct. 1800 (1974) Wheeler vs. U.S., 640 F. 2d. 1116.

Murphy contends the denial to correspondence between she and her former husband is far-reaching and does not pose a tangible threat to the order and security of the institution.

At no time did Murphy attempt to mail any mail or have any mail delivered to the mailbox for delivery to Thomas Avant (P.O. Box 24192 and Avant are valid information on Murphy. Avant is a legal name.) The Team based their finding of guilt on the name and P.O. Box. Murphy spoke to Mr. Fondale, ISM, as to what constitutes "misuse of mail", and he agrees this is not a case of misuse of mail. Painter requested an Affidavit from Shephard and Blevins. Shephard lied during this investigation by stating Karin Long gave her the information on the incident report. She did not! Lt. Oakes intimidated the witness and made her a hostile

Betty Jean Murphy
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witness before she could explain to him how Long came into possession of the letters o r Murphy-Avant request copies of any and all statements formulated pertaining to this matter.

There is no evidence to support the charges of misuse of mail. It is not unlawful for her use Avant. The mere possession of Murphy aka Avant's mail does not support the charges of:

1. Misuse of Mail.
2. Giving something of value to another inmate without staff's authorization.

The stamps were of no value to Long period. See: Edward vs. White, 501 F. Supp. 8, (M.D. Pa 1979).

There is no evidence to support Murphy aka Avant conspired with anyone, namely Karin Long, nor Roxanne Blevins, who actually gave Karin Long the mail to mail on her departure. See: U.S. ex rel Smith vs. Robinson, 495 F. Supp 696 (E.D. PA 1980).

As stated by the Team, the only evidence "was Murphy's own admission they were her letters, not that she gave the letters to anyone and the officers' statements as to the misuse of mail not the giving of something of value and money, based on the lack of evidence. This finding must be struck down and not second-guessed. Murphy seeks expungement of the record. The Procedural protections and tainted evidence does not comply with the Due Process requirements. This is precisely why Murphy seeks the review of the writer/censor, Shephard and deferred to SIS Lt. Jones and acting Captain Stanley. Thomas Avant met the procedural liberty interest for visitation under the First Amendment and local statutes and regulations contrary to Avant meeting those visiting standards, Altizer found the correspondence was inappropriate "because of the length of separation" not criminal history." No children are required to correspond.

Acting Captain Stanley caused deliberate, intentional harm by announcing to all the Inmate Housing Ranges that Murphy-Avant had lost her furlough because of her attempt to have letters mailed that was unrpofessional conduct which caused Murphy irreparable damage. She singled Murphy out for harassment. It was unnecessary to express Murphy's personal dilemma to the inmate population, when the Town Hall Meeting was pertaining to institutional changes and security and not disciplinary results. Murphy was the only inmate that was denied a seven (7) day furlough based on a Stanley mail infraction. (Code 410-Low Series). Stanley singled Murphy out to make an "example" of her for writing her ex-husband, who should have been approved from the onset. At FCI Edgefield, the Staff there were appalled Tina Altizer made such a call to deny their request for Mr. Thomas Avant to correspond with his ex-former wife, Betty Murphy. Acting Captain Stanley failed to respond to Murphy's Cop-Out, written and hand delivered to her making her aware of some misconduct by subordinates Correction Officer Shephard and Lt. Oakes. Murphy alleged that Shephard tampered with and destroyed pertinent evidence (2 plain white sealed envelopes). These envelopes were of a mitigating nature to Murphy's defense at Team. It would have supported Murphy's argument, she did not deliver the mail to a "Karin Long" (from whom Shephard confiscated the letters) but rather another named inmate, Roxanne Blevins. The envelopes bore the signature of Blevins.

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Lt. Oakes lied to the witness, Roxanne Blevins, selected by Murphy and made her a hostile witness, by telling her Murphy said "Karin Long had stolen the mail". Murphy had stated he needed to ask Blevins how Long came into possession of the letters, knowing Blevins, not Murphy, gave Long the letters to mail when she was released.

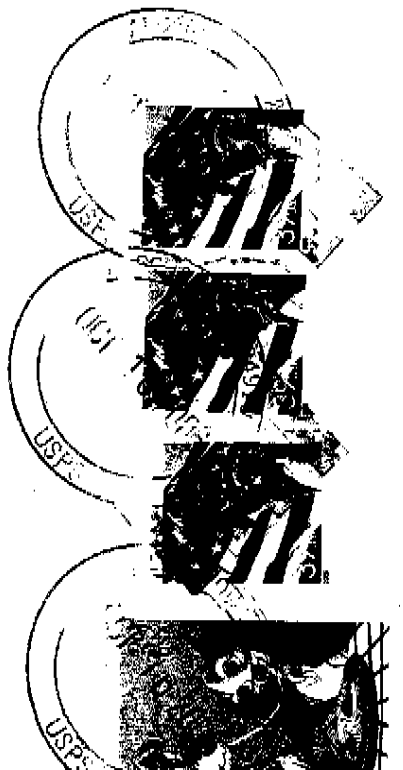
Shephard rearranged the statement given him by Karin Long, to frame the Incident Report and never provided a written statement from Long to support his ill-gotten sworn statement which constitutes a "false statement".

Certificate of Service

Service cannot be effectuated at this juncture because no Assistant United States Attorney has been assigned.

Betty Jean Murphy
Betty Jean Murphy
Dated October 23, 2006

Betty Murphy aka Aunt
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Okeechobee D. 349910



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